Supreme Court, U.S.
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No. 93-1080

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

DOCTOR'S ASSOCIATES, INC.,
Petitioner,

v.

DICK DEWAYNE COX, JR. and
SUBSTANTIAL ENTERPRISES, INC.,
Respondents.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, Fifth District

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PETITIONER'S REPLY MEMORANDUM

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February 4, 1994

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Respondents raise only two arguments in opposition to the petition. First, Respondents contend that the jury's $200,000 actual damage award for breach of contract justifies the $1,000,000 punitive damage award for fraud. Opposition at 2-4, 15-22. That argument is illogical and it ignores the law in Illinois, as did the courts below. Respondents do not dispute that in Illinois punitive damages may not be awarded for breach of contract; thus, the $200,000 award for breach of contract is irrelevant. Respondents likewise do not dispute that in Illinois an award of actual damages is a prerequisite to punitive damages. The jury awarded no actual damages for the fraud claim in Count II. The ratio between punitive damages and relevant actual damages is $1,000,000 to zero. That ratio raises a serious due process issue.[1]

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[1] The fact that the jury was not given the option of awarding actual damages for Count II does not alleviate the due process

Second, Respondents argue that because Petitioner Doctor's Associates, Inc. ("DAI") did not seek review of the trial court's refusal to enter a remittitur pursuant to Ill. Rev. Stat. ch. 735, § 5/2-1207, DAI waived its argument that the punitive damages award violates the Due Process Clause. The simple answer is that DAI preserved its constitutional arguments before the trial court and the Appellate Court of Illinois. *See, e.g.*, Brief of DAI before the Appellate Court of Illinois at 39-42. DAI also preserved its arguments that punitive damages were not warranted by the facts or the law in this case. *Id.* at 27-39. DAI's failure to preserve one state law basis for attacking the punitive damage award does not waive all others, and certainly does not waive DAI's due process arguments.[2]

Respondents do not meaningfully respond to DAI's arguments that the award of punitive damages in this case was unjustified and excessive. Respondents do not cite any evidence to support their contention that DAI committed fraud, a claim that Respondents abandoned when they voluntarily dismissed with prejudice their common law fraud claim in Count IV. The Court should grant the petition to establish that an award of punitive damages violates the Due Process Clause when the jury awarded no actual damages on the only claim that could warrant punitives. This case would complement *Honda Motor Co., Ltd. v. Oberg*, No. 93-644, which is pending before the Court and also deals with due process limits on punitive damage awards.

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problem; rather, it demonstrates the trial court's error, which was affirmed by the appellate court.

[2] Respondents note that DAI did not attack the jury instructions on appeal. Opposition at 4. Respondents do not, however, suggest that failure to seek review of the jury instructions is grounds for denying the petition for certiorari. In any event, as noted above, DAI preserved its due process arguments.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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